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THE CONSUMER MOVEMENT IN THE 80's

A SLEEPING GIANT STIRS

**A KEYNOTE SPEECH TO
CONSUMER FEDERATION OF AMERICA'S CONSUMER ASSEMBLY**

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BY

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(The views expressed are those of Commissioner Pertschuk only and do not reflect the views of the Commission or any other Commissioner.)

What a sorry lot we all were two years ago this month: consumers had lost their government; you had lost a movement; I had lost my job.

We were like Tom Lehrer's sad-sack "Folk-song Army" -- we had all the good songs -- but we had lost all the battles.

Speaker after speaker in that January gloom prayed for better times -- but feared for the worst. And the worst, or much of the worst, happened.

Throughout the breadth of the Federal government, the Reagan administration brewed a poisonous admixture of crude freemarket ideology and corporate sycophancy.

Consumers were bugs on the Reagan windshield of regulatory removal. With all the subtlety of Jane Byrne clearing the snowbound streets of Chicago in an election year, the Reagan regulators set to work plowing up the national framework of regulation: sound or unsound, essential to consumer life, limb and economic security or frivolous; burdensome or benign.

(Though they have been far more timid in attacking those forms of regulation such as shipping and trucking which enjoy potent business support.)

In New York City when the cops in their patrol cars at night pull into a quiet corner, pull their caps down over their eyes, and nap; they call it "cooping." Well, throughout Washington's regulatory agencies -- Reagan's cops are cooping!

Is it because business crime, fraud, neglect and overreaching have vanished? Hardly. Witness the September 1982 U.S. News and World Report expose entitled, "Corporate Crime: The Untold Story."

Recession brings many ills, not the least of which are heightened pressures and temptations for distressed businessmen, whose very economic survival may be at stake, to cut ethical corners, shade the truth, hang tough on the small print. When a consumer now complains about a product defect or warranty failure, it's "No more, Mr. Nice Guy."

The monthly total of consumer complaints to the Better Business Bureau in Denver rose, in one year of the recession, from 5,000 to more than 14,000. In Seattle, a U.S. Food and Drug Administration official complained, "Since the Federal Trade Commission cut back on its enforcement activities, I've never before seen such blatant claims in advertising." And when antitrust chiefs William Baxter and James Miller announced to the world they would stop the per se laws against retail price-fixing on the theory they are economically irrational, mass retailers warned this "nonsensical" policy "has the potential for killing the discount industry," which is so critically important to consumers in these hard economic times. Summing all this up, a prominent Washington attorney said, "My clients don't worry about obeying the law anymore because they know the FTC won't do anything."

When Reagan's regulators were named as neo-visigoths methodically sacking Washington, did they deny it? Not on your life! They embraced the visigoths as ancient soul brothers: "a peaceful, productive people, tired of a meddling aggressive government," insisted the FTC's director of public affairs. The visigoths were provoked into "one final and successful revolt."

Sacking Rome? Raging and ravaging the entire eastern half of the Roman empire? In the immortal words spoken by Zero Mostel, "raping thrace thrice?" This was a peaceful pastoral people?

Perhaps we do injustice to the visigoths. One wonders if even the visigoths would have been the lone tribe to hold out against the World Health Organization's efforts to restrain the crude promotion of infant formula in underdeveloped countries where it poses severe public health risks to undernourished babies.

I have no intention of spoiling your digestion by chronicling the consumer miseries of the Reagan administration -- partly because it is hard to do justice to such injustice in so short a space; partly because their misdeeds leap out from every newspaper and broadcast channel; but mostly because they are inexorably passing into richly deserved historical obscurity.

I pause only briefly to note that in two years Reagan's consumer leadership at the new FTC has succeeded in transforming the Washington Post's pet image for errant regulators from "National Nanny" to "Gyro-Gearloose."

Do you remember Gyro-Gearloose? The Washington Post remembers. He was Walt Disney's "impractical intellectual":

...The giant goose, with glasses about to fall off his nose and vest askew, who was always inventing some new and utterly useless gadget.

In the Gyro-Gearloose tradition, Mr. Muris, (the FTC's bureau director for consumer protection) produces exotic theories that seem to make perfect sense until you start thinking how they would work in the real world.

I have a modest example. Last month Chairman John Dingell of the House Commerce Oversight Subcommittee called the FTC on the carpet to account for its record under Reagan as the dormant doormat of regulatory agencies.

Among other curiosities, the Subcommittee investigators had found that the FTC's Seattle Regional Office had been all set to insist upon the recall of an allegedly defective survival suit, worn by oil rig workers and seamen working on rough seas.

"Wait!" cried a Commission economist, responding in Gyro-Gearloose economics, FTC style. Maybe there will be a few drownings; then a few lawsuits; who knows, the market in survival suits may well be self-correcting. Recall negotiations were halted until the existence of the investigation leaked. It may be one of the few times in modern history in which it took a leak to repair a leak.

Congressman Albert Gore, outraged, asked Chairman Miller:

If market forces in the form of lawsuits by surviving widows and children will eventually remedy the problem after enough people have died, is that something that can substitute for the activities of the Commission?

Mr. Miller:

It depends on the circumstances.

Shortly after the public hearing, the company voluntarily recalled its suits for repair. Keen Congressional oversight, led by John Dingell and Al Gore, had triumphed. Meanwhile the FTC is still plodding along, investigating.

A goodly number of Reagan's regulators have now spent two years doing to the public precisely that which in private incarnations (as lawyers, flacks, lobbyists and business cheerleaders) they tried to do to the government. Others are plainly honest, if limited, men and women, who truly believe that business liberated from odious government constraints will follow justice and fair dealing all of its days.

It is difficult to separate these true believers from those who pursue deregulation out of ties to past corporate employers and the promise of future rewards -- and not just in heaven. But the damages each inflicts on the consumer interest are indistinguishable.

As if Reagan's recalcitrant regulators weren't bad news enough, a new Congress led by business PAC-horses seemed ready to do in the consumer interest by undoing any consumer rules left standing by Reagan.

The congressional Democrats, our last fond hope, served notice of their deep commitment to the ordinary citizen, by outbidding David Stockman in tax giveaways to the unordinary citizens of wealth, influence and privilege.

The 97th Congress went downhill from there, hitting a historic low note with its veto of the FTC's pale shadow of a used-car warranty rule. By November of last year the House was poised, with 219 proud cosponsors, to perform what Senator Warren Rudman called a "frontal lobotomy" on the FTC -- erasing for all time the Commission's authority to prosecute antitrust violations and consumer fraud among any professionals smart enough to earn graduate degrees and politically organized enough to secure a state license.

Then something happened.

Up in Syracuse, here's what the people did. On September 23, 1982, voters in the Republican congressional primary got mad at Gary Lee. Now Gary Lee's name was not exactly a household word, even in his own congressional district. But thanks to Common Cause and Congress Watch, the folks in Syracuse learned that Gary Lee was the champion of both the used car dealers and proudly took their PAC money.

Lee's defeat "sends a message," said the New York Times. "Opportunistic congressmen who flack for special economic interests may wind up paying with their jobs."

"We couldn't have said it better ourselves," echoed Lee's home district Syracuse Post-Standard.

And out on Long Island in Smithtown, here is what the people did. Volunteer canvassers for the Citizens/Labor Energy Coalition knocked on 30,000 doors asking: "Did you know that your Congressman, John LeBoutillier, took campaign contributions from oil companies and voted to take the lid off natural gas prices next winter?"

And conservative Smithtown, which went 60 percent for LeBoutillier in 1980, went 61 percent for challenger Robert Mrazak, an unabashed consumer advocate, in 1982.

And down in North Carolina, here is what they did: They retired three of Jesse's boys. The defeat of one, William M. Hendon, especially warmed the hearts of the National Council of Senior Citizens and the American Association of Retired Persons.

Hendon had vowed to sink the Commission's Funeral Cost Disclosure Rule.

That he came from a long line of family funeral directors, he said, only heightened his appreciation of the FTC's outrageous meddling in innocent commerce.

Now Hendon and others were doubtless defeated by people who had lots of grievances besides consumer injustice to take up with Jesse Helms and Ronald Reagan.

But the Chamber of Commerce had targeted 112 "opportunity" races, designating the candidates who in their hearts they believed would do the Chamber's bidding. Of those 112 Chamber candidates, only 50 (45%) won, down from 70 percent in 1980.

And of the 94 congressional candidates endorsed by the Consumer Federation of America, 77 won; of the 81 members who are

no longer with us, 60 had worse than average consumer voting records, in CFA's judgment; of the 34 House incumbents who lost, 31 voted to veto the Used Car Rule.

In 1981, the late Washington Star thought it detected in the Reagan landslide a "public howl" of indignation against consumer regulation. Yet in 1982, no sitting congressman or senator was ousted for defending consumer, environmental, health or safety regulation and no challenger rode to victory decrying regulation as the chief bane and scourge of our society.

Now it would appear that Congress, if not Reagan, would have received a clear message from the electorate in November.

Perhaps, it did.

When the Congress reconvened after the election, a broad bipartisan coalition in the House led by Jim Florio, John Dingell, Jim Broyhill and Norman Lent came within a handful of votes of stopping the AMA. This, in the face of the AMA lobby's earlier success in securing more than half of the House members as cosponsors of its bill and the medical societies' more than \$3,000,000 in congressional campaign contributions.

Then, on the Senate floor, at 5:15 in the morning of December 16th, Senator McClure offered the AMA amendment as a rider to the continuing resolution. For months Howard Metzenbaum, the consumer's Horatio-at-the-bridge, had threatened to filibuster any attempt to hang the AMA amendment as a rider to a bill on the Senate floor. Vote counts taken before the election had suffused the AMA lobbyists with optimism, and here, in the waning hours of the lameduck session, they were pressing for a showdown vote.

A strong succession of speakers rose to denounce the AMA amendment: Packwood, Gorton, Metzenbaum, Proxmire, Kennedy, Eagleton, Durenberger, Chafee, Heinz, Levin. Finally, Warren Rudman, the Senator from New Hampshire, who had the day before led a successful fight in the Appropriations Committee against the McClure amendment spoke:

I noticed something very interesting in the last week. For the first time in twenty years doctors are making house calls. They made house calls in the Dirksen Building, they made house calls in the Russell Building. They are so concerned about our health that the reception room is packed with them, and I say we ought to give the American people a break.

As they trudge down the steps, discouraged and disheartened because we did the right thing, as they get into their Mercedes and Porsches and drive back to their suites in the Madison, let us give the American people a break. Let us regulate those things which need regulation. Let us regulate anticompetitive practices.

Rudman wisely refrained from adding that the doctors' defeat would be a bitter pill for the AMA, but a tonic for the consumer movement.

The AMA amendment lost 59-37. That lameduck session of the 97th Congress will doubtless go down in history as the "Lame-Doc" session!

Charlie Peters, the editor of the Washington Monthly, called the vote:

...the first step back on the road of the politics of selfishness.

Mary McGrory added:

...the lameduck's single shining hour meant so much to so many. It said, against much contrary evidence, that money isn't everything.

It is hardly time for consumers to let up their guard against the Reagan regulators' passion to unilaterally disarm the consumer in the marketplace. There will doubtless be sufficient sustained malfeasance by the Reagan regulators and lapses by Congress to engage the passion of consumer leaders, the media, and concerned citizens for the duration of the Reagan administration.

But, as Reaganomics trails off into a sinking sunset, it is time for those of us who beat our breasts as consumer advocates to confront an untidy secret: We have grown dependent upon reacting to the follies of Reagan's regulators or following the scent of the PAC's in Congress. Like our colleagues in the environmental movement, we have loved to hate the Reagan regulators.

I don't want to suggest for a moment that they have not amply earned our ill will. Reacting against whatever the Reagan regulators are for is still a rough, but reliable, guide to the consumer interest.

But reacting only to their misguided ventures enables us to postpone the awkward day when -- like the Democratic Party -- we must shape an affirmative program that is both realistic and compatible with a broader vision of a just society.

It is useful to return to the public impulses that fueled the consumer movement of the sixties and early seventies. In large part, the movement was born of growing frustration: defective products backed by evaporating warranties; cigarette commercials that promised bliss and delivered cancer; autos and toys so casually designed that they neglected elemental

safeguards against maiming and killing; phony or distorted advertising claims; the persistent marketing of useless drugs -- or worse, useless and hazardous drugs. These and other accumulating consumer blows converged to evoke the elemental cry of the ripped-off consumer: "Their Oughta Be a Law!"

The consumer movement fed upon consumer anger and alienation. Ralph Nader evoked a responsive chord among the American public because he spoke for the frustration of the individual who felt buffeted by unresponsive institutions -- government and business.

The consumer impulse -- perhaps not quite a movement, but not just another "special interest" -- can perhaps best be viewed as a stirring of what philosopher William M. Sullivan calls the American "civic republican" tradition.

To be sure, the objectives of consumer activists -- economic justice and consumer safety -- are broadly self-interested. But consumer issues have engaged the energies of citizens not as narrowly self-interested economic players but as citizens striving for the betterment of their community and society. As Sullivan observes of the kindred civil rights and environmental movements, its participants have been "motivated by a combination of self-interest and a great deal of disinterested civic concern."

The consumer movement is not a revolutionary movement; but it is a disturber of the peace. It is especially disturbing to those now in philosophical high fashion and in power in the Reagan administration, who view all public conflict as the combat

of the self-interested, and government as only the inept and corruptible referee of the warring greedy. The consumer movement has been especially a disturber of those whose material good fortune convinces them of their own virtue and economic entitlement.

"All anyone ever wants," former Senate Commerce Committee Chairman Warren Magnuson used to say at the end of a long wearying day listening to the pleas of lobbyists, "is a fair advantage!"

As Sullivan and others have begun to argue, this vision of the individual as bounded by self-interest, and government as broker of last resort for channeling the sum of individual self-interests, represents the exhausted, failing vision of the neo-conservatives -- failing, because only an explosively expanding economy could ever hope to satisfy the sum of individual self-seeking; exhausted, because it fails to account for the human experience which teaches that humanity finds its most satisfying expression in the pursuit of common needs, through political and civic participation in the larger community.

When Robert Lekachman entitles his indictment of the Reagan administration, Greed is Not Enough, he captures the essence of the consumer movement, as well as the Achilles' heel of Reaganomics. A strong sense of community values permeates the consumer movement: truth, reciprocity, trust, fair dealing, equity. The antipathy of consumer groups toward such practices as discrimination against the elderly or women or non-whites, or

toward advertising that exploits or deceives children, is motivated not so much by the drive to increase the consumer's share of the economic pie at the expense of producers as by a sense of moral outrage at the breakdown of ethical norms. Fairness and truthfulness, whether in advertising or in the most intimate of relations, are not merely necessary elements of efficient marketplace transactions; they are the essence of civil relationships in an interdependent society.

This is why the amalgam of greed and corruption represented by the AMA and used car dealers lobbying has generated such universal loathing.

The conservatives (or, more accurately, philosophic liberals in the Hobbesian tradition) who people the Reagan administration insist that all citizens in the political process are motivated by self-interest. But the consumer and other public interest movements stand as contrary testimony to the vitality of traditions of civic virtue through association and participation in the democratic process. These are the very traditions which DeTocqueville first noted as the unique American bulwark against despotism.

The consumer crusades of the sixties and early seventies were uncomplicated by doubt. The economy was flush and expansive. In demanding minimum auto safety standards and defect recalls, consumer advocates didn't have to worry about GM's entrepreneurial robustness or the livelihood of auto workers and their communities. Indeed the unions -- true to labor's traditions -- were the backbone of the organized consumer movement.

Now, it's not so easy. Consumers may bristle at the efforts of business to lay the effects of its own neglect and shortsightedness at consumerism's door. (U.S. safety and air pollution standards hardly inhibited flourishing Japanese enterprise.) Still, to the extent that the consumer movement truly aspires to both economic well-being and civic justice, its righteous outrage at consumer abuse must now be tempered with genuine concern for failing or thwarted enterprise and attendant high unemployment.

But heightened sensitivity to the pain of workers and the rehabilitative needs of productive enterprise does not dictate the abandonment of principles which have long guided the consumer movement. Indeed, most often the fundamental interests of consumers and a healthy economy coincide. Ironically, it was stringent, government-enforced, quality control standards that nurtured the growth of Japanese consumer product firms -- to the mutual benefit of both Japanese consumers and the international competitiveness of Japanese products. While American industry ritualistically resisted all efforts by consumer advocates to insist upon minimal performance standards for products, Japanese industry embraced such standards.

And for those who now grasp as an industrial panacea the "loosening" of the antitrust laws so that united American cartels can go forth to do international combat -- it should at least give pause to note that the Japanese automobile industry honed its competitive edge on the fierce domestic rivalry of no less than nine independent automobile manufacturing firms! This,

while our big three, dominating the domestic market, grew sluggish. Those who have studied European industrial policy with its encouragement of mergers and the anointing of corporate "National Champions" have concluded that, uniformly, the national champion fails to penetrate international markets. But it does succeed in exploiting a monopolized domestic market to the detriment of both domestic industry and domestic consumers.

But hard times demand that consumers listen with open minds to the pleas of their friends and allies in labor, as well as to others, for the development of new industrial policies which promise the restoration of a healthy economy. It may indeed be prudent and justified to provide narrowly focused, temporary relief for certain industrial segments.

But the consumer interest is entitled at least to a place at the bargaining table. The consumer must be heard to argue for the proven virtues of open competition. Where the case for protection has been made -- or at least won -- the consumer must be heard to argue for its least costly forms and to insist upon a quid pro quo from both business and labor: from the businesses benefited, a contractual commitment to productive reinvestment; from workers, a commitment to enhanced productivity.

It is the role of the consumer movement not only to insist upon a place at the bargaining table, but to keep insisting that the development of national economic policy affecting consumers be open to broad public scrutiny and that the consumer interest be heard and heeded.

For the revived consumer movement, the agenda is full. The Reagan anti-consumer binge is only half spent. Preserving the fundamental framework of consumer protection and antitrust laws erected over more than fifty years will continue to occupy consumer leaders until the Reagan administration ends.

Campaign finance reform must share the top of all citizen group agendas. No citizen interest is more vulnerable to the bureaucratized plutocracy of the PAC's than the consumer interest.

The defeat of the AMA was soul satisfying. But the sad lesson is that the AMA got so far with an effort of so little merit -- and in the face of an ecumencial coalition that encompassed David Stockman and Ralph Nader, CFA and the American Enterprise Institute, Fortune 500 corporations, AARP, nurse midwives, steelworkers, opticians, and FTC Chairman James C. Miller III. With such opposition, can there be any doubt that gratitude for contributions past and the promise of more to come played a major role in making the AMA amendment a credible threat? Consumers' lives and pocketbooks will not be secure until campaign pockets are sewn up.

Finally, consumer leaders must seize back from Mobil and the libertarian economists the symbols of debate. They must make it clear that their concerns are neither narrow nor trivial nor incompatible with a society under economic stress.

The consumer movement is not anti-business. The true creative entrepreneur is as much a consumer hero as the advocate.

The consumer movement does not stand for excessive regulation or centralized bureaucratic excrescences. Consumer leaders have joined and led regulatory reform efforts. The consumer movement does stand for responsive government intervention in the marketplace: "the public restraint of private greed." The consumer movement does not stand for a patronizing "consumer protection" to protect consumers against their own informed choices. It does stand for free choice among enlightened consumers.

Despite the efforts of Reagan's deregulators to convince the American public that government has no legitimacy in enforcing standards of responsibility and fairness, the American public won't buy that lemon.

For indeed the consumer movement has "the good songs." And, in the future, it is not going to lose all of the battles.